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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,342	03/17/2004	Peter M.J. Bedding	7593-CIP	3643

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EXAMINER	
GHALI, ISIS A D	

ART UNIT	PAPER NUMBER
1611	

NOTIFICATION DATE	DELIVERY MODE
11/12/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPAdmin@reinhartlaw.com

Office Action Summary	Application No.	Applicant(s)	
	10/802,342	BEDDING ET AL.	
	Examiner	Art Unit	
	Isis A. Ghali	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 October 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,12-17,19-22 and 24-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10,12-17,19-22 and 24-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07/06/2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The receipt is acknowledged of applicants' amendment and request for RCE, both filed 10/19/2010; and IDS filed 07/06/2010.

Claims 1-10, 12-17, 19-22 and 24-38 are pending and included in the prosecution.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/2010 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-10, 12-17, 19-22 and 24-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims are drawn to "the polar lipid, the soluble fiber source, the nutricine, and the protein concentrate supplement are present in said nutritional product in respective amounts sufficient to enhance growth and/or strengthen the immune system of equine foals". The specification gives no guidance to one of ordinary skill in the art regarding any "enhancement of growth and/or strengthen the immune system of equine foals". The specification does not describe "protein concentrate supplement".

The mere recitation of "enhancement of growth and/or strengthen the immune system of equine foals" does not convey to one of ordinary skill in the art that applicants were in possession of the claimed subject matter at the time of the invention and does not meet the written description requirement enhancement of growth and/or strengthen the immune system of equine foals. The claimed limitation was recited without showing or disclosing actual enhancement of growth and/or strengthen the immune system of equine foals. Further, the limitation of "protein concentrate supplement" not described in the specification because applicants failed to describe the composition and ingredients of the "supplement" that provides the protein concentrate. Is the protein concentrate supplement separate supplement composition other than the claimed composition, or it is the claimed supplement composition. Claims employing limitation at the point of

novelty, such as applicants', neither provide those elements required to practice the inventions, nor "inform the public" during the life of the patent of the limits of the monopoly asserted.

To satisfy the Written description requirement, applicant must convey with reasonable clarity to one skilled in the art, as of the filing date that applicant were in possession of the claimed invention. *Vas-Cath Inc. v Mahurkar*, 19 USPQ 2d 1111. The invention is, for purpose of the "written description" inquiry, what ever is now claimed (see page 1117). The specification does not clearly allow person of ordinary skill in the art to recognize that [he or she] invented what is claimed (see *Vas-Cath* at page 116). One cannot describe what one has not conceived. See *Fiddes v Baird*, 30 USPQ2d 1481, 1483.

Regarding the requirement for adequate written description the Federal Circuit has adopted the standard set forth in the Patent and Trademark Office ("PTO") Guidelines for Examination of Patent Applications under the U.S.C. 112.1 "Written Description" Requirement ("Guidelines"), 66 Fed. Reg. 1099 (Jan. 5, 2001), which state that the written description requirement can be met by "showing that an invention is complete by disclosure of sufficiently detailed, relevant identifying characteristics," including inter alia, "functional characteristics when coupled with a known or disclosed correlation between function and structure..." *Enzo Biochem Inc. v. Gen-Probe Inc.*, 296 F. 3d 316, 1324-25 (Fed. Cir. 2002) (quoting Guidelines, 66 Fed. Reg. At 1106 (emphasis added)). Moreover, although *Eli Lilly and Enzo* were decided within the factual context of DNA sequences, this does not preclude extending the reasoning of

those cases to pharmaceuticals in general. *Univ. of Rochester v. G.D. Searle & Co.*, 249 Supp. 2d 216,225 (W.D.N.Y. 2003).

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to one skilled in the art that the inventor had the possession at the time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claimed language. See *In re Kaslow*, 707 F 2d 1366, 1375 (Fed. Cir. 1983). See MPEP 2163.06.

The written description requirement prevents applicants from using the amendment process to update the disclosure in their disclosures (claims or specification) during the pendency before the patent office. Otherwise applicants could add new matter to their disclosures and date them back to their original filing date, thus defeating an accurate accounting of the priority of the invention. See 35 USC 132. The function of description requirement is to ensure that the inventor had possession, as of filing date of the application relied on, the specific subject matter claimed by him. See Genetech, 108 F 3d 1361, 1365 (Fed. Cir. at 1366, 78, 1999).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-10, 12-17, 19-22, 24-28, 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs (US 2002/004988, of record) combined with Myllymäki et al. (US 5,312,636, currently listed on PTO 892) and the article Alltech (of record), and optionally further in combination with either of Hallfrisch et al. ("Diets containing soluble oat extracts improve glucose and insulin responses of moderately hypercholesterolemic

men and women", of record) or Van Lengerich et al. (US 2003/0153746, currently listed on PTO 892).

Applicant Claims

Applicants' present claim 1 is directed to a nutritional product comprising:

a polar lipid that has been isolated from its natural source which polar lipid is high in galactolipids and antioxidants;

a soluble fiber source that has been fractionated from its natural origin which soluble fiber source exerts a beneficial effect on health; wherein said soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans;

a nutricine consisting of a source of dietary nucleotides; and

a protein concentrate supplement.

wherein said polar lipid, said soluble fiber source, said nutricine, and said protein concentrate supplement are present in said nutritional product in respective amounts sufficient to enhance growth and/or strengthen the immune system of equine foals.

Determination of the Scope and Content of the Prior Art

(MPEP §2141.01)

Fuchs teaches composition for administration to human and companion animals comprising protein source, lipid source, carbohydrate source and micronutrients comprising at least vitamin E and vitamin C (abstract; ¶ 0030). The composition is

useful to treat conditions such as ulcerative colitis (¶ 0064). The composition comprising whey protein concentrate and sources of amino acids comprising threonine and teaches that the nutritional composition used as indirect source to promote endogenous glutamine production in human and animal to improve immune function (¶ 0041-0043, 0063-0064). The amino acids provides between 15-18% of total energy of the composition (¶ 0021). The lipid source forms 18-40% of the composition and comprises high oleic acid sunflower and safflower, soy oil, olive oil, and fractionated coconut oil (¶ 0044, 0048). The composition comprises source of soluble fibers and oligosaccharides that affect the host by selectively stimulating growth and activity of bacteria in the colon which have the potential to improve host health (¶ 0051). The composition comprises prebiotic fibers to prevent or decrease the growth of pathogens (¶ 0052). The composition is rich in vitamins E, and comprises other vitamins such as vitamin B_{12} and minerals (¶ 0050). The composition comprises guar gum and emulsifiers (¶ 0051, 0057). The composition further comprises medicines (¶ 0064). The composition is nutritional supplement in the form of powder, liquid concentrate, bar/snack or ready to use formulation (¶ 0036). Fuchs teaches that the amount and regimen of administration of nutritional supplement given to patient vary depending on patient's condition, body weight, age, and other sources of nutrition, and may be given from 2 to 5 times a day or in single daily dose (¶ 0066).

Ascertainment of the Difference Between Scope the Prior Art and the Claims (MPEP §2141.012)

Although Fuchs teaches soluble fibers, however, does not explicitly teach soluble fibers that have been fractionated from original source such as oat and its amount as claimed by claims 1 and 10, 12-17. While Fuchs teaches polar lipids, however does not explicitly teach polar lipids from oat containing antioxidant as claimed by claims 2, 3 and 5-9. Although the reference teaches proteins and amino acids that contain nucleotides, however, the reference does not explicitly teach nucleotide from yeast cell as claimed by claims 19-22 and additional nutricine materials from yeast cell wall as claimed by 24-26. Fuchs teaches mineral, however, does not explicitly teach organic selenium as claimed by claims 35-37.

Myllymäki teaches fractioning grains such as oat to isolate several fractions of high yield and purity degree required for technical uses including soluble dietary β-glucan fibers, oat lipids having antioxidant effect, and proteins. The isolated fractions are used in pharmaceutical preparations, alimentary preparations and food and feed (abstract; col.2, lines 30-36, 47-59; col.3, line 4; col.4, lines 20-25, 50-55; claim 1). The reference teaches according to the use of fractions and to the composition and quality requirement, the extraction of lipid is performed on the entire batch or on the bran portion, where the fat content is higher (col.3, lines 32-35). Example show that up to 75% of oat oil can be present in the extraction and 17-18% β-glucan.

Alltech teaches enhancement of animal physiological condition through nutrition including Yea-Sacc®1026 as yeast culture as a performance enhancing for animals. Yea-Sate1026 is an active yeast culture comprised of viable cells from the strain Saccharomyces cerevisiae 1026. Yea-Sacc1026 is the only yeast culture that can be

called rumen modifier. Alltech disclosed Bio-Mos that is a phosphorylated mannanoligosaccharide derived from the cell wall of the yeast and has been scientifically proven around the world to be beneficial to animals. Bio-Mos has shown positive results alone and in combination with antibiotic programs in animal diets. Alltech teaches that organic selenium is crucial mineral as protective in a number of metabolic diseases and essential for the basic functions of growth and reproduction and improves animal performance.

Hallfrisch teaches that diet containing soluble oat extracts improve glucose and insulin responses of moderately hypercholesterolemic subjects. The high amount of soluble β-glucan in oat is responsible for beneficial effects on glucose tolerance and blood lipid. The study done by the reference used 1% or 10% soluble β-glucan. The reference teaches that to concentrate soluble β-glucan from oat is known patented method and soluble β-glucan can be incorporated as fibers into varieties of food to significantly affect risk factors for diseases without altering palatability or acceptability of the diet (page 379, abstract, introduction; page 381, results; page 382, discussion).

Van Lengerich teaches high quality beta-glucan soluble dietary fibers extracted from oat suitable for dietary supplement (abstract; ¶ 0006, 0007, 0012; examples). Soluble fibers have beneficial effects as cholesterol reduction, blood sugar regulation in diabetics and prevention of colon cancer (¶ 0002).

Finding of Prima Facie Obviousness Rational and Motivation

(MPEP §2142-2143)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a nutritional supplement comprising amino acids source, protein concentrate, lipid source and soluble fibers as taught by Fuchs, and further add isolated fractions extracted from oat containing oat lipid and β-glucan soluble fibers as taught by Myllymäki. One would have been motivated to do so because Myllymäki teaches that isolated oat lipid has antioxidant effect and the isolated soluble β-glucan fibers are suitable for alimentary preparations, and further teaches that the isolated fractions have high yield and purity degree required for technical use. One would reasonably expect formulating nutritional supplement comprising amino acids, protein concentrate, antioxidant oat lipids, and soluble β-glucan fibers isolated from oat wherein the supplement has antioxidant effect, suitable for alimentary preparations that have high yield and purity degree.

Additionally, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide nutritional supplement comprising amino acids, protein concentrate, antioxidant oat lipid and soluble oat β-glucan fibers as taught by the combination of Fuchs and Myllymäki, and further add cultured yeast cells or replace amino acids with cultured yeast cells and add BIOMOS as taught by Alltech. One would have been motivated to do so because Alltech teaches that cultured yeast cells enhances of animal physiological condition and performance and BIOMOS is scientifically proven around the world to be beneficial to animals. One would reasonably expected formulating nutritional supplement comprising cultured yeast cells, protein

concentrate, antioxidant oat lipid and soluble oat β-glucan fibers that is beneficial to subject and enhances subject physiological condition and performance.

Furthermore, one having ordinary skill in the art would have been motivated to provide nutritional supplement comprising amino acids, protein concentrate, antioxidant oat lipid, soluble oat β-glucan fibers and minerals as taught by the combination of Fuchs and Myllymäki, and further replace the mineral taught by Fuchs with organic selenium taught by Alltech. One would have been motivated to do so because Alltech teaches that organic selenium is crucial mineral as it is protective in a number of metabolic diseases and essential for the basic functions of growth and reproduction and improves animal performance. One would reasonably expected formulating animal feed or nutritional supplement comprises amino acids, protein concentrate, antioxidant oat lipid, soluble oat β-glucan fibers and organic selenium that provides advantage to gastrointestinal tract and protect animal against metabolic diseases.

The available Alltech information, does not provide the amount of cultured yeast cells, Bio-Mos or organic selenium. However, those of ordinary skill in the art would have been readily optimized effective dosages as determined by good medical practice and the clinical condition of the individual subject because Fuchs teaches that the amount and regimen of administration of nutritional supplement given to patient vary depending on patient's condition, body weight, age, and other sources of nutrition, and may be given from 2 to 5 times a day or in single daily dose. Determination of the appropriate dosage for treatment involving each of the above mentioned ingredients would have been routinely made by those of ordinary skill in the art and is within the

ability of tasks routinely performed by them without undue experimentation. One would have been motivated to combine these references and make the modification because they are drawn to same technical fields (constituted with same ingredients and share common utilities), and pertinent to the problem which applicant concerns about. MPEP 2141.01(a).

Optionally, further it would have been obvious to one of ordinary skill in the art at the time of the invention to provide nutritional supplement comprising amino acids, protein concentrate, isolated antioxidant oat lipids and isolated soluble β-glucan fibers from oat and further comprises cultured yeast cells as taught by the combination of Fuchs, Myllymäki and Alltech and further use oat β-glucan extract comprising soluble fibers taught by any of Hallfrisch or Van Lengerich. One would have been motivated to do so because Hallfrisch teaches that soluble β-glucan extracted from oat can be incorporated in diet to significantly affect risk factors for diseases without altering palatability or acceptability of the diet, and because Van Lengerich teaches that β-glucan soluble dietary fibers extracted from oat have beneficial effects as cholesterol reduction, blood sugar regulation in diabetics and prevention of colon cancer. One would reasonably expect formulating nutritional supplement comprising amino acids, protein concentrate, cultured yeast cells, isolated oat lipid and isolated soluble oat β-glucan fibers wherein the supplement has beneficial health effect.

Absent any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in practicing the

instantly claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

8. Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs combined with Myllymäki and Alltech, and optionally combined with Hallfrisch or Van Lengerich as applied to claims 1-10, 12-17, 19-22, 24-28, 33-38 above, and further in view of Bengmark et al. ("Gastrointestinal surface protection and mucosa reconditioning", of record).

Applicant Claims

Applicants' present claims 29-32 further recite that the amino acid is glutamine.

Determination of the Scope and Content of the Prior Art

(MPEP §2141.01)

The combination of Fuchs with Myllymäki and Alltech, and optionally combined with Hallfrisch or Van Lengerich teaches nutritional supplement comprising threonine, cultured yeast cells, protein concentrate, vitamins and minerals, BIOMOS, fractioned lipid source and soluble oat β-glucan. Fuchs further shows interest in stimulating endogenous glutamine production.

Ascertainment of the Difference Between Scope the Prior Art and the Claims

(MPEP §2141.012)

Although Fuchs shows interest in stimulating endogenous glutamine production, Fuchs however does not teach the nutritional supplement comprises glutamine as claimed by claims 29-32.

Bengmark teaches that amino acids and particularly glutamine used for reconditioning the intestinal mucosa (see provided abstract).

Finding of Prima Facie Obviousness Rational and Motivation

(MPEP §2142-2143)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a nutritional supplement comprising cultured yeast cells, protein concentrate, vitamins and minerals, BIOMOS, oat lipid, and β-glucan soluble fibers as taught by the combination of Fuchs with Myllymäki and Alltech, and optionally combined with Hallfrisch or Van Lengerich, and further add glutamine taught by Bengmark to the supplement. One would have been motivated to do so because Fuchs is interested in stimulating endogenous glutamine production, and because Bengmark teaches that glutamine used for reconditioning the intestinal mucosa. One would reasonably expect formulating nutritional supplement comprising cultured yeast cells, protein concentrate, lipid source, and soluble oat β-glucan fibers wherein the composition has improved reconditioning effect on the gastro-intestinal mucosa.

Regarding the amounts of glutamine, one having ordinary skill in the art would have been determined the amounts glutamine in the composition according to individual user and condition to be treated because Fuchs teaches that the amount and regimen

of administration of nutritional supplement given to patient vary depending on patient's condition, body weight, age, and other sources of nutrition, and may be given from 2 to 5 times a day or in single daily dose.

Absent any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in practicing the instantly claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

9. Applicant's arguments filed 10/19/2010 have been fully considered but they are not persuasive.

The main gist of applicants' argument against Fuchs reference is that the reference requires that "the fiber selected should not induce satiety" which teaches directly away from the claims.

In response to this argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the fiber selected should not induce satiety) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The present claims does not exclude the presence of soluble prebiotic fibers taught by Fuchs in the supplement. Fuchs teaches that soluble prebiotic fibers

selectively stimulate growth and activity of bacteria in the colon which have the potential to improve host health. This teaching does not exclude the addition of soluble β-glucan fibers from oat taught by Myllymäki, Hallfrisch and Van Lengerich. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Fuchs does not teach away from adding glucan soluble fibers as asserted by applicants. Fuchs provides supplement to enable patients with digestive tract problems to retain their strength quickly and to help recovery of convalescing patients, paragraph 0022. Myllymäki, Hallfrisch and Van Lengerich all directed to soluble β-glucan fibers suitable for nutritional supplements. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." In re Gurley, 27 F.3d 551,553 (Fed. Cir. 1994).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-

0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Isis A Ghali/
IG Primary Examiner, Art Unit 1611